

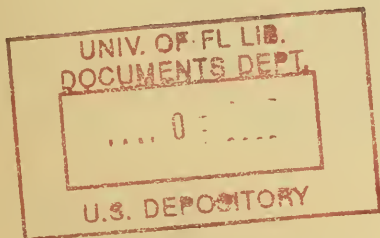
NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

FOR THE

DRY COLOR INDUSTRY

AS APPROVED ON APRIL 25, 1934



UNITED STATES
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Approved Code No. 407

CODE OF FAIR COMPETITION

FOR THE

DRY COLOR INDUSTRY

As Approved on April 25, 1934

ORDER

APPROVING CODE OF FAIR COMPETITION FOR THE DRY COLOR INDUSTRY

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of a Code of Fair Competition for the Dry Color Industry, and hearings having been duly held thereon and the annexed report on said Code, containing findings with respect thereto, having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, I, Hugh S. Johnson, Administrator for Industrial Recovery, pursuant to authority vested in me by Executive Orders of the President, including Executive Order No. 6543-A, dated December 30, 1933, and otherwise; do hereby incorporate by reference said annexed report and do find that said Code complies in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act; and do hereby order that said Code of Fair Competition be and it is hereby approved; provided, however, that Article VII, Section 3, and Article VIII be deleted from the Code.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Approval recommended:

GEO. L. BERRY,
Division Administrator.

WASHINGTON, D.C.,
April 25, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report of the hearing on the Code of Fair Competition for the Dry Color Industry, conducted in Washington on November 28, 1933, in accordance with the provisions of Title I of the National Industrial Recovery Act.

LABOR PROVISIONS

The Code provides that no employee shall be permitted to work for an average of more than forty hours per week in any two months' period, such periods commencing on January 1 of each year, nor more than forty-eight hours in any one week, but not so as to exceed an average of forty hours per week during such two months' period and that any employee compensated on an hourly basis shall be paid time and one-third for time in excess of ten hours in any twenty-four hour period or forty hours in any one week, except as follows:

Maintenance and repair crews, etc., are allowed a tolerance of ten per cent and time and one-third is to be paid for time in excess of eleven hours in any twenty-four hour period or forty-four hours in any one week. In cases of emergency effecting life or property, repair crews and electricians and their respective assistants may be employed for whatever number of hours per week are necessary, provided that time and one-third shall be paid for time in excess of forty-eight hours in any one week. Executive, administrative, supervisory staffs and color chemists who earn \$35 per week or more and who also enjoy vacation periods, sick leave and other benefits granted to salaried workers, are excepted. For a period of nine months after the effective date of the Code, color matchers may be employed not in excess of forty-eight hours per week, after which period they shall be subject to the general hours provisions. During periods of season or peak demands in a department, not to exceed six weeks in any six months' period, employees may be permitted to work for an average of forty-four hours per week but not in excess of forty-eight hours per week and time and one-third overtime is to be paid for hours in excess of eleven hours in each twenty-four hour period of forty-four hours in any one week. There is an exception also applying to the manufacturers of earth colors which requires open-air clay and shale digging operations to be carried on when the weather is favorable. These employees may not work in excess of forty-eight hours per week during any six months' period from May 1 to October 31, inclusive, in each calendar year but the average weekly hours of work of such employees shall not exceed forty per week for the full calendar year.

The Code provides minimum wages of forty cents per hour in plants located in cities having a population of 350,000 or over or in

the immediate trade area of such city and in all other plants a rate of 36 cents per hour except as follows: Employees of the manufacturers of earth colors, operating in towns, villages or communities of not more than 6,000 population in the states of Tennessee, Alabama, Georgia, and Virginia shall receive a minimum hourly wage of 30 cents. The minimum wages for laboratory apprentices for a period of six months from the date of employment, and office boys and office girls shall not be less than 80% of the minimum wages above specified, provided that the total number of such employees shall not exceed 5% of the total number of employees of any employer subject to the Code.

Applying to wages above the minimum, the Code provides that, based upon changes in minimum pay necessitated by the foregoing paragraphs of this Article, each employer shall make fair and equitable readjustment of all pay schedules unless such readjustment has already been made subsequent to June 16, 1933.

The Code includes provisions covering minimum age of employees, on reclassification of employees, the application of State laws and for posting all current copies of the Code in places accessible to employees.

OTHER PROVISIONS

Other provisions include a very limited number of trade practice provisions, most of which are of the standard recognized type of fair trade practice provisions. There is no open price association provided for or any provision prohibiting sales below cost.

ECONOMIC EFFECT OF THE CODE

This Industry produces color pigments by various processes which are essentially batch operations that vary greatly in time required for completion. Out of seventy-six known companies which did a total estimated business in 1929 of \$16,000,000 and in 1932, of \$12,500,000, thirty-seven of these, from whom questionnaire returns were received, accounted for \$14,378,000 in 1929 and \$10,452,000 in 1932.

Under normal conditions most plants in the Industry have in the past operated on a basis of fifty hours a week. The Industry did not release its employees noticeably after 1929. The above thirty-seven companies, according to the compilation made by the Division of Economic Planning and Research, had 1,130 employees in 1929 and an average of 1,129 in 1932 and somewhat less in the first half of 1933.

Under the President's Reemployment Agreement which required an average of forty hours per week 1,458 employees were on the payrolls of these thirty-seven companies in the last week of October, 1933, an increase of 34%. Practically no decrease of employment is shown in 1932 in spite of a 22% decrease in dollar value of the business. The dollar value of the business in the Fall of 1933 was at a rate which about equalled the average for 1929.

On account of the specialized nature of the business and the "style" factor involved, it is not practical to make up much inventory stock in advance. In view also of the fact that practically all of the manufacturing operations of the Industry are batch opera-

tions, a certain flexibility in the hours provisions of the Code is essential and has been provided for.

Referring to the effect of the minimum wages specified in the Code, the report of the Division of Economic Research and Planning states as follows:

"The estimated increase of payroll due to the operation of the Code (as revised for public hearing on November 28) would be about 6% above present levels. However, since payrolls are already at about the 1929 levels (due to the operation of the President's Reemployment Agreement) this additional increase in payrolls will bring them to about 5% above the 1929 level."

The addition of provisions for overtime in the Code as submitted for approval as compared with the Code as filed for public hearing will have some slight effect in increasing the payrolls.

FINDINGS

I find that:

(a) Said code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among the trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) Said Industry normally employs not more than 50,000 employees; and is not classified by me as a major industry.

(c) The code as approved complies in all respects with the pertinent provisions of said Title I of said Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant association is an industrial association truly representative of the aforesaid Industry; and that said association imposes no inequitable restrictions on admission to membership therein.

(d) The code is not designed to and will not permit monopolies or monopolistic practices.

(e) The code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said code.

For these reasons this code has been approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

APRIL 25, 1934.

CODE OF FAIR COMPETITION FOR THE DRY COLOR INDUSTRY

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are established as a Code of Fair Competition for the Dry Color Industry, and upon approval by the President shall be the standard of fair competition for such Dry Color Industry and shall be binding upon every member thereof.

ARTICLE I—DEFINITIONS

(a) The term "Dry Color Industry" as used in this Code shall include the manufacture for sale as a raw material, to manufacturers of other products, Pigment Colors (except White, Bone Black and Organic Black Pigments) of organic or inorganic origin as a completed product, either in dry form or dispersed, ground or suspended in water, oil, varnish, or any other vehicle.

(b) The term "member of the Industry" includes, without limitation, any individual, partnership, association, corporation or other form of enterprise engaged in the Industry, either as an employer or on his or its own behalf.

(c) The term "employee" as used herein, includes any and all persons engaged in the Industry, however compensated.

(d) The term "President", "Act", and "Administrator" as used herein shall mean respectively, the President of the United States, the National Industrial Recovery Act, and the Administrator for Industrial Recovery.

(e) Population for the purposes of this Code shall be determined by reference to the 1930 Federal Census.

(f) The term "effective date" as used in this Code is defined to be the tenth day after the approval of this Code by the President of the United States.

ARTICLE II—STATUTORY PROVISIONS RELATING TO EMPLOYEES

As required by Section 7 (a) of Title I of the National Industrial Recovery Act, the following provisions are conditions of this Code:

"(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

"(2) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

"(3) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

ARTICLE III—MAXIMUM HOURS OF LABOR

SECTION 1. No employee shall be employed at an average of more than 40 hours per week in any two months' period, such periods commencing on January 1 of each year, nor more than 48 hours in any one week, but not so as to exceed the average of 40 hours per week during such two months' period; and any such employee compensated on an hourly basis shall be paid time and one-third for time in excess of 10 hours in any 24 hour period or forty hours in any one week; the foregoing provision shall apply in all cases except:

(a) Maintenance and repair crews, shipping crews, engineers, firemen and electricians shall be allowed a tolerance of 10% and time and one-third shall be paid for time in excess of 11 hours in any 24 hour period or 44 hours in any one week.

(b) In cases of emergency affecting life or property, repair crews and electricians and their respective assistants may be employed for whatever number of hours per week are necessary by reason of such emergencies, provided, however, that time and one-third shall be paid for time in excess of 48 hours in any one week and provided further that any time involved in such emergencies shall not be computed in determining the average hours per week.

(c) Traveling salesmen and watchmen; employees engaged in executive, administrative or supervisory capacity and color chemists, earning \$35.00 per week or more, who enjoy vacation periods, sick leave and other benefits granted to salaried workers.

(d) For a period of nine months after the effective date of this Code, color matchers may be employed not in excess of 48 hours per week after which period they shall be subject to the provisions of Section 1, hereof.

(e) During periods of season or peak demands in any department or division of the Industry which place an unusual and temporary requirement for production upon such department or division, it shall be permissible to work employees in such departments or divisions for 44 hours per week averaged over any six weeks' period, but not more than 48 hours in any one week. Such periods of season or peak demands shall be limited to not more than 6 weeks in each half of each calendar year and time and one-third shall be paid for time worked in excess of 11 hours in each 24 hour period or 44 hours in any one week.

(f) With respect to manufacturers of Earth Colors, all employees engaged in open-air clay and shale digging operations, or engaged in operations in isolated communities where qualified labor is not and cannot be made available, may work not in excess of 48 hours per week during the six months' period from May 1 to October 31, inclusive, in each calendar year; but the average weekly hours of work of such employees shall not exceed 40 hours per week for the full calendar year.

ARTICLE IV—MINIMUM WAGES OF EMPLOYEES

SECTION 1. (a) The minimum wages of employees in the Dry Color Industry, except laboratory apprentices and office boys and office girls, shall be at the rate of 40 cents per hour in plants located in any city of 350,000 population or over, or in the immediate trade area of such city; and in all other plants, at the rate of 36 cents per hour, except as hereinafter provided:

(b) With respect to manufacturers of Earth Colors operating in towns, villages, or communities of not more than 6,000 population in the States of Tennessee, Alabama, Georgia, and Virginia, the minimum hourly rate shall be 30 cents.

(c) The minimum wages for laboratory apprentices (for a period of six months from date of employment) and office boys and girls, shall be not less than 80% of the minimum wage hereinabove provided; and the total number of laboratory apprentices and office boys and girls employed at this rate shall not exceed 5% of the total employees of any employer subject to this Code; but each employer may have at least one such office boy or girl and one such laboratory apprentice.

(d) It is agreed that this Article establishes a guaranteed minimum rate of pay regardless of whether the employee is compensated on the basis of a time rate or on a piecework performance.

(e) Based upon changes in minimum pay necessitated by the foregoing paragraphs of this Article, each employer shall make fair and equitable readjustments of all pay schedules, unless such readjustment has already been made subsequent to June 16, 1933.

ARTICLE V—GENERAL LABOR PROVISIONS

(a) No person shall be employed in the Dry Color Industry who is under the age of sixteen years; nor under the age of eighteen years at operations or occupations which are hazardous in nature or dangerous to health, provided, however, that where a State law provides a higher minimum age, no person below the age specified by such State law shall be employed within that State.

(b) Employers shall not reclassify employees or duties of occupations performed by employees so as to defeat the purposes of the Act, or the provisions of this Code.

(c) Within each State members of the Industry shall comply with any laws of such State imposing more stringent requirements regulating the age of employees, wages and hours of work than those specified under this Code.

(d) Each employer shall post in conspicuous places accessible to employees, full current copies of this Code.

ARTICLE VI—ADMINISTRATION

SECTION 1. To further effectuate the policies of the Act, a Code Authority is hereby constituted to cooperate with the Administrator in the administration of this Code. The Code Authority shall consist of seven individuals, or such other number as may be approved from time to time by the Administrator, to be selected as hereinafter set forth. The Administrator, in his discretion, may appoint not more than three additional members without vote to represent

the Administrator or such groups or interests as may be agreed upon without expense to the Industry.

SECTION 2. Within ten days after the effective date of this Code, on five days' prior notice to all members of the Industry, a Code Authority shall be elected at a meeting of the Dry Color Industry by a fair method of election subject to the approval of the Administrator to serve for a period of one year and until their successors are elected and qualify. A vote of not less than $66\frac{2}{3}\%$ of the members of the Industry, present in person or by proxy, who have assented to the Code, said percentage furthermore to comprise not less than $66\frac{2}{3}\%$ of the total volume of sales in dollars of the preceding calendar year of Inorganic Colors, Organic Colors and Mineral Colors of members present in person or by proxy, shall be necessary for the election of any individual. Such voting power to be determined by certified reports submitted by members of the Industry, at the request of the Code Authority, of their sales in dollars for the previous calendar year of the products defined in Article I of this Code. The Code Authority shall consist of at least one individual representing each of the following groups, respectively, Inorganic Colors, Organic Colors, and Mineral Colors.

SECTION 3. In order that the Code Authority shall at all times be truly representative of the Industry and in other respects comply with the provisions of the Act, the Administrator may provide such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification in the method of selection of the Code Authority.

SECTION 4. If the Administrator shall determine that any action of the Code Authority or any agency thereof may be unfair or unjust or contrary to the public interest, the Administrator may require that such action be suspended to afford an opportunity for investigation of the merits of such action and further consideration by such Code Authority or agency pending final action which shall not be effective unless the Administrator approves or unless he shall fail to disapprove after thirty days' notice to him of intention to proceed with such action in its original or modified form.

The Code Authority shall have the following duties and powers to the extent permitted by the Code:

(a) To collect from the members of the Industry all data and statistics which may be necessary for the proper administration of this Code. Any data and/or statistics of a confidential nature shall be collected and compiled by a firm of certified accountants or other suitable agents selected by the Code Authority, and not a member or connected with a member of the Dry Color Industry. The data and/or statistics so collected by such agents shall be disseminated only in combination with other information of the same type and in such forms as will not disclose the individual data or statistics furnished by any member. No member of the Code Authority, no member of the Industry, and no officer, director, employee, or agent of any member of the Dry Color Industry, or any other person shall at any time have access to or be furnished in any manner with any information by said agents which would disclose the individual data or statistics furnished by any member.

(b) To represent the Dry Color Industry in conferring with the Administrator with respect to the application of this Code and of said Act and any regulations issued thereunder, and receive complaints and if possible adjust the same, and to receive any proposals for supplementary provisions or amendments of this Code and transmit the same to the Administrator.

(c) All such other powers and duties as shall be necessary or proper to enable it fully to administer the Code and to effectuate its purpose and the purpose of the Act.

(d) The Code Authority shall carefully investigate all complaints it may receive of any violation of the provisions of this Code. If a complaint is sustained, the cost of the investigation thereof shall be borne by the member of the Industry against whom such complaint is sustained, such cost to be determined by the Code Authority and to be paid to it.

(e) Each member of the Industry accepting the benefits of the activities of the Code Authority shall pay to the Code Authority his proportionate share of the amounts necessary to pay the cost of assembling, analyzing, and publication of such reports and data, and of the maintenance of the Code Authority, in connection with its activities relative to the preparation and administration of this Code, such proportionate share to be based on the volume of business and such other factors as the Code Authority may prescribe subject to review by the Administrator.

(f) Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent, or employee of the Code Authority, exercising reasonable diligence in the conduct of his duties hereunder, nor be liable to anyone for any action or omission to act under the Code, except for his own willful misfeasance or nonfeasance.

ARTICLE VII—ADDITIONAL STATUTORY PROVISIONS

SECTION 1. Neither this Code, nor any provisions contained therein, is designed to promote monopolies, or monopolistic practices, or to eliminate or oppress small enterprises, and shall not be interpreted or applied in such manner as to discriminate against small enterprises. The said Code shall be interpreted and applied in such a manner as to effectuate the policy of Title I of the National Industrial Recovery Act.

SECTION 2. The President of the United States may from time to time cancel or modify any order, approval, license, rule, or regulation issued under Title I of the National Industrial Recovery Act.

SECTION 3. By presenting this Code, those assenting hereto do not thereby consent to any modification thereof and do reserve the right to object individually or jointly to any such modification.¹

ARTICLE VIII—CONSTITUTIONAL RIGHTS

Assent to this Code shall not be deemed a waiver of any constitutional rights.¹

¹ Deleted—see paragraph 2 of order approving this Code.

ARTICLE IX—TRADE PRACTICES

The following trade practices are hereby declared to constitute unfair methods of competition. The use of any of them by any member of the Dry Color Industry shall constitute a violation of this Code, and is hereby prohibited:

(a) No member of the Industry shall give, permit to be given, or directly offer to give any bribe, gratuity, gift, other payment or remuneration, or anything of value for the purpose of influencing or rewarding the action of any employee, agent or representative of another in relation to the business of the employer of such employee, the principal of such agent or the represented party, without the knowledge of such employer, principal or party. This provision shall not be construed to prohibit free and general distribution of articles commonly used for advertising, except insofar as such articles are actually used for commercial bribery as hereinabove defined.

(b) Procuring by surreptitious methods any information concerning the business of any member of the Industry which is properly regarded by such member as a trade secret or confidential within its organization, excepting therefrom information relating to a violation of any provision of this Code.

(c) Imitating or simulating any design, style, mark or brand used by any other member of the Industry.

(d) False or misleading advertising.

(e) Disseminating, publishing, or circulating any false or misleading information relative to any product or price for any product of any member of the Dry Color Industry, or the credit standing, or ability of any member thereof to perform any work or manufacture or produce any product, or to the conditions of employment among the employees of any other member thereof.

(f) Inducing or attempting to induce by any means any party to a contract with a member of the Dry Color Industry to violate such contract.

(g) Members of the Industry shall recognize the right of employees to use all honorable and reasonable efforts to better their conditions, but shall refrain from directly or indirectly soliciting or bidding for the services of the employee of another member. Only when such an employee takes the initiative, shall a member of the Industry have the right to negotiate with him about prospective employment.

(h) The false marking or branding of any product of the Industry, whether as to the grade, quality, quantity, substance, character, nature, origin, size, finish, or preparation or otherwise.

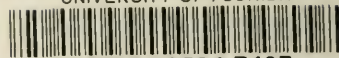
(i) Paying or allowing to any purchaser in connection with the sale of any product any rebate, commission, credit, discount or concession other than is specified in the contract of sale. The maximum rate of cash discount shall in no case exceed 1%.

(j) The provisions of Article IX shall not apply to sales for export to foreign countries.

Approved Code No. 407.

Registry No. 607-1-01.

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